

**ITEM 9**

**PROPOSED PARAMETERS AND GUIDELINES  
STAFF ANALYSIS**

Penal Code Section 148.6, Subdivisions (a)(2) and (a)(3)

Statutes 1995, Chapter 590

Statutes 2000, Chapter 289

*False Reports of Police Misconduct (00-TC-26)*

County of San Bernardino, Claimant

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**ITEM 9**

**FINAL STAFF ANALYSIS  
PROPOSED PARAMETERS AND GUIDELINES,  
AS MODIFIED BY STAFF**

Penal Code Section 148.6, Subdivisions (a)(2) and (a)(3)

Statutes 1995, Chapter 590

Statutes 2000, Chapter 289

*False Reports of Police Misconduct (00-TC-26)*

County of San Bernardino, Claimant

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**EXECUTIVE SUMMARY**

The test claim statutes added or amended Penal Code section 148.6. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. These statutes require any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign a specified information advisory. These statutes also require the advisory to be available in multiple languages.

**Staff Analysis**

Staff reviewed the claimant's proposal and the comments received. Substantive changes were made according to the comments received from state agencies and claimants, and to conform to recently adopted parameters and guidelines. Non-substantive, technical changes were made for purposes of clarification and conformity to the statement of decision and statutory language.

Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines.

***IV. Reimbursable Activities***

The claimant proposed various reimbursable activities including training, establishing and updating an intranet site, interviewing the complainant, and addressing questions or concerns by the complainant. Staff deleted these activities because they were not identified in the Statement of Decision nor found to be reasonably necessary to comply with the mandate. Staff also clarified the reimbursement periods for each of the reimbursable activities.

***V. Claim Preparation and Submission***

The claimant proposed a uniform time allowance for three of the proposed reimbursable activities. Since staff deleted two of these activities, staff modified the uniform time allowance to coincide with the remaining reimbursable activity.

**Staff Recommendation**

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by Commission staff, beginning on page 9.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

## STAFF ANALYSIS

### Claimant

County of San Bernardino

### Chronology

02/20/04 Commission on State Mandates (Commission) adopted Statement of Decision  
06/04/04 Claimant submitted proposed parameters and guidelines  
07/12/04 The State Controller's Office (SCO) submitted comments  
08/02/04 Claimant submitted rebuttal to SCO comments  
02/10/05 Draft staff analysis issued  
03/11/05 Claimant submitted comments on the draft staff analysis  
03/17/05 Final staff analysis issued

### Summary of the Mandate

The test claim statutes added or amended Penal Code section 148.6. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. These statutes require any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign a specified information advisory. These statutes also require the advisory to be available in multiple languages.

On February 20, 2004, the Commission adopted its Statement of Decision finding that Penal Code section 148.6, subdivision (a), sections (2) and (3) impose a reimbursable state-mandated program on city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.<sup>1</sup> The Commission approved the following new activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). (Pen. Code, § 148.6, subd. (a)(2).)<sup>2</sup>
- Make the advisory available in multiple languages, utilizing the translations available from the State. (Pen. Code, § 148.6, subd. (a)(3).)<sup>3</sup>

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

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<sup>1</sup> Exhibit A.

<sup>2</sup> As added by Statutes 1995, chapter 590; reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

<sup>3</sup> As amended by Statutes 2000, chapter 289; reimbursement period begins no earlier than January 1, 2001, the operative date of the statute.

## Discussion

Staff reviewed the claimant's proposed parameters and guidelines<sup>4</sup> and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines:

### *IV. Reimbursable Activities*

#### Training

The claimant's proposal included the one-time activity of training employees that perform the reimbursable activities. Staff deleted training because it is not identified in the Statement of Decision as a reimbursable activity. Nor is it reasonably necessary to comply with the test claim legislation, because the test claim legislation was enacted in 1995, four years before the beginning of the reimbursement period for this program. Thus, if employees were trained to comply with the mandated program, it would have occurred before July 1, 1999.

In their comments on the draft staff analysis, the claimant stated that employee training is necessary to carry out the intended requirements of the mandate.<sup>5</sup> The claimant states that employee turnover and shifting of assignments in the department are two examples that would cause the County to hire and/or train employees in carrying out the mandate requirements. Staff finds that if any training is required to comply with this mandate it would be minimal, as the only activity required is to provide a complainant with an advisory form. In *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1195, the court held that providing two hours of domestic violence training to peace officers was not a reimbursable state mandate, concluding, "Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement." Staff finds that training employees on providing a complainant with a form can be done with a "minimal reallocation of resources," as discussed in the *County of Los Angeles* decision. Therefore staff deleted training.

#### Forms and Folders

The proposed parameters and guidelines included the activities for establishing and updating an intranet site for saving and downloading PC 148.6 advisory forms. In their comments, the SCO stated that additional costs to establish an intranet site to save downloaded files are at the discretion of the entity and should not be subject to reimbursement. The SCO states that instead, the downloaded electronic forms should be saved in an existing electronic medium.<sup>6</sup> In their rebuttal to the SCO comments, the claimant agrees that the manner in which forms are saved is at the discretion of the entity, but argues that the manner in which they choose is reimbursable.<sup>7</sup> Staff finds that establishing and maintaining an intranet site goes beyond the scope of the

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<sup>4</sup> Exhibit B.

<sup>5</sup> Exhibit F.

<sup>6</sup> Exhibit C.

<sup>7</sup> Exhibit D.

mandate. There is no need to create an entirely new intranet site to store documents when they can be easily stored in an existing electronic format. Therefore, this activity is not reasonably necessary to comply with the test claim legislation. Staff deleted this activity.

However, the claimant also proposed the one-time activity of creating an advisory form folder to file the PC 148.6 advisory forms that are created and released by the Department of Justice (DOJ). The Commission found in its Statement of Decision use of the DOJ forms is a reasonably necessary method of complying with the mandate. Therefore, staff finds that downloading the advisory form in an electronic format and saving it in a folder, whether electronic or paper, and creating that folder, whether electronic or paper, are efficient procedures for administering a forms process, and are reasonably necessary to carry out the mandate.

Thus, staff revised the language to clarify that creating a folder to store the forms, in both electronic and paper formats, and downloading the electronic form, are reimbursable.

The claimant also proposed the ongoing activity of updating the folder as new forms are released by DOJ. Although these activities were not stated in the Statement of Decision, staff finds that this activity is considered an efficient procedure for administering a forms process, and is reasonably necessary to comply with the mandate. Therefore, staff retained this activity, but clarified that updating the forms folder is reimbursable if additional forms become available through the Department of Justice.

#### Law Enforcement Notification

The claimant's proposal included an ongoing activity of informing the local law enforcement agency employees about the availability of the new or revised PC 148.6 advisory forms by the DOJ. Although this activity was not stated in the Statement of Decision, staff finds that ensuring that local agency employees are kept informed about current forms is reasonably necessary to comply with the mandate. Therefore, staff retained this activity.

#### Policies and Procedures

The claimant's proposal included a one-time activity to develop policies and procedures and an ongoing activity to update the policies and procedures as needed. This mandate added specific new activities for law enforcement agencies when accepting allegations of peace officer misconduct. As a result, policies and procedures for accepting allegations of peace officer misconduct should already exist. Therefore, staff deleted the activity of *developing* policies and procedures. However, staff finds that the one-time activity of *updating* existing policies and procedures to include these new activities is reasonably necessary to comply with the mandate, and modified the language accordingly.

#### Complainant Interviews

In the original proposed parameters and guidelines, the claimant proposed that interviewing the complainant to determine which language to provide the advisory form in should be a reimbursable activity. The claimant also proposed that addressing any questions or concerns from the complainant regarding reading and signing the advisory form be reimbursable. As stated in the Statement of Decision, this mandate only requires law enforcement agencies accepting an allegation of misconduct against a peace officer to have the complainant read and sign the advisory. This mandate does not require any explanatory or other additional activities on the part of law enforcement agencies. Therefore, staff deleted these activities.

In their comments on the draft staff analysis, the claimant states that interviewing the complainant is necessary in order to provide the complainant with the advisory form written in a language understood by the complainant. The claimant further states that "providing explanatory or other additional activities necessary to comply with the mandate in helping these underprivileged complainants to understand and sign the mandated forms."<sup>8</sup> As stated in the Statement of Decision, the plain language of Penal Code section 148.6 does not require a law enforcement agency to read the document aloud, explain the document or answer questions. Also, as discussed in the Statement of Decision, the Legislature considered an amendment requiring greater action on the part of peace officers, but chose not to implement it when adopting the final version of the bill. Therefore, these activities were clearly denied in the Statement of Decision. Staff finds that any explanatory or other additional activities are undertaken at the discretion of the law enforcement agency and are not reimbursable. Thus, these activities were deleted.

#### Period of Reimbursement

As stated under Section III. Period of Reimbursement, there are two distinct reimbursement periods for this program. Penal Code section 148.6, subdivision (a)(2), requires local law enforcement agencies to provide the complainant with the advisory form. This requirement is effective July 1, 1999. Penal Code section 148.6, subdivision (a)(3), effective January 1, 2001, requires local law enforcement agencies to provide the form in multiple languages. Therefore, staff clarified that providing the form under section 148.6, subdivision (a)(2), is reimbursable from July 1, 1999 through December 31, 2000, and providing the form in multiple languages under section 148.6, subdivision (a)(2) and (a)(3) is reimbursable beginning January 1, 2001.

#### *V. Claim Preparation and Submission*

The claimant proposed a uniform time allowance of 22 minutes for three of the proposed ongoing activities (identified in the claimant's proposal as activities IV.B.5, IV.B.6. and IV.B.7.). However, staff deleted two of these proposed activities (IV.B.5. and IV.B.7.). Therefore, staff modified this section to reduce the uniform time allowance to two minutes. This reflects the uniform time allowance for the remaining activity of providing the complainant with the advisory form written in a language understood by the complainant. In their comments on the draft staff analysis, the claimant requested that the deleted activities be reinstated and that the uniform time allowance be restated back to the 22 minutes per case. As addressed in Section IV, the deleted activities were not reinstated. Therefore, staff retained the uniform time allowance of two minutes.

Finally, staff deleted reimbursement for travel and training under this section, since travel and training are not included in the Statement of Decision, nor are they reasonably necessary to carry out the mandate. There is nothing in the program that requires travel to complete the required activities. Training was denied as a reimbursable activity as described on page 4, above.

#### *VI., VIII., and IX. Boilerplate Language*

Sections V., VIII., and IX. include boilerplate language for Record Retention, State Controller's Claiming Instructions, and Remedies before the Commission. Staff made technical changes to these sections to include the changes made in 2004 by Statutes 2004, chapter 890 (AB 2856).

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<sup>8</sup> Exhibit F, page 3.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed parameters and guidelines, beginning on page 9.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.



11/27/50

**PROPOSED PARAMETERS AND GUIDELINES,  
AS MODIFIED BY STAFF**

. Penal Code Section 148.6, Subdivisions (a)(2) and (a)(3)

Statutes of 1995, Chapter 590

~~Statutes of 1996, Chapter 586~~

Statutes of 2000, Chapter 289

*False Reports of Police Misconduct (00-TC-26)*

County of San Bernardino, Claimant

**I. SUMMARY OF THE MANDATE**

Statutes of 1995, Chapter 590; ~~Statutes of 1996, Chapter 586;~~ and Statutes of 2000, Chapter 289 added or amended Penal Code section 148.6. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer relating to the false police misconduct report filings. These statutes:

- ~~Make it a misdemeanor to file an allegation of misconduct against any peace officer, knowing the report to be false.~~
- Require any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign a specified information advisory.
- ~~Make it an additional misdemeanor for knowingly filing a false civil claim against a peace officer or placing lien against his or her property, with the intent to harass or dissuade the officer from carrying out his or her official duties.~~
- Require the advisory to be available in multiple languages.

On January 29, 2004, the Commission on State Mandates (Commission) adopted ~~its the~~ Statement of Decision for *False Reports of Police Misconduct (00-TC-26)*. The Commission found that Penal Code section 148.6, subdivision (a), sections (2) and (3), the test claim legislation constitutes a new program or higher level of service and impose a reimbursable state-mandated program upon city and county law enforcement agencies local governments within the meaning of Article XIII B, Section 6, of the California Constitution and Government Code section 17514. Accordingly, the Commission approved this test claim for the following reimbursable activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2), when accepting an allegation of peace officer misconduct.
- Making the advisory available in multiple languages, through utilizing the translations available from the State, as prescribed in Penal Code section 148.6, subdivision (a)(3).

The Commission denied any remaining alleged activities or costs, including any from Penal Code section 148.6, subdivision (a)(1), as added by Statutes 1995, chapter 590, and subdivision (b) as added by Statutes 1996, chapter 586, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state within the

meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

## II. ELIGIBLE CLAIMANTS

Any city, county, city and county, or special district employing peace officers and incurring increased costs as a direct result of this mandate ~~is~~ are eligible to claim reimbursement of these costs.

## III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on Monday, July 2, 2001. Since June 30 fell on a Saturday in 2001, the filing deadline for establishing a July 1, 1999 reimbursement period pursuant to and the test claim was postmarked to the Commission on Monday, July 2, 2001, the Government Code section 17557, subdivision (c), and the operative regulations, was delivery or postmark by Monday, July 2, 2001, establish July 1, 1999 as the initial period for which reimbursement can be filed. Thus, costs incurred for compliance with Statutes 1995, Chapter 590 and Statutes 1996, Chapter 586 are eligible for reimbursement on or after July 1, 1999. Statutes 2000, Chapter 289 was operative January 1, 2001. Therefore, costs incurred for compliance with Statutes 2000, Chapter 289 are reimbursable on or after January 1, 2001.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, ~~training packets,~~ and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

**Reimbursement Period July 1, 1999 through December 31, 2000<sup>1</sup>:**

In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2).<sup>2</sup>

**A. One-Time Activities**

- ~~1. Train those employees that actually perform the reimbursable activities listed in Section IV, A and B, of these parameters and guidelines. (One time activity per employee.)~~
- ~~2. Create advisory form folder to file multi-language PC 148.6 advisory forms, which are created and released by the Department of Justice.~~
- ~~3. Establish an intranet site where PC 148.6 advisory forms are saved electronically, and are available for downloading by the interested parties.~~
- 2-1. Develop/Update policies and procedures to implement the reimbursable activities listed in Section IV., B, of these parameters and guidelines.

**B. On-going Activities**

1. Provide the complainant with the PC 148.6 advisory form. See Section V. A. for uniform time allowance for this activity.

**Reimbursement Period Begins January 1, 2001<sup>3</sup>:**

Make the advisory available in multiple languages, utilizing the translations available from the state.<sup>4</sup>

**C. One-Time Activities**

1. Create and electronic and/or paper advisory form folder to file multi-language PC 148.6 advisory forms, which are created and released by the Department of Justice.
2. Update policies and procedures to implement the reimbursable activities listed in Section IV., C. and D, of these parameters and guidelines.

**D. Ongoing Activities**

- ~~1. Update and implement policies and procedures as needed. (Reimbursement period begins July 1, 1999.)~~
- 2-1. Downloading the PC 148.6 advisory form and saving it to an electronic and/or paper advisory form folder.

<sup>1</sup> Pursuant to Government Code section 17557, subdivision (c).

<sup>2</sup> Penal Code section 148.6, subdivision (a)(2), as added by Statutes 1995, chapter 590.

<sup>3</sup> Pursuant to Government Code section 17557, subdivision (c).

<sup>4</sup> Penal Code section 148.6, subdivision (a)(3), as added by Statutes 2000, chapter 289.

2. Update the multi-language advisory form folder as needed, if additional the new PC 148.6 advisory forms become available through the Department of Justice.
3. ~~Update the intranet site as the Department of Justice releases the new PC 148.6 advisory forms electronically for downloading purposes.~~
4. 3. Inform the local law enforcement agency employees about the availability of the new, (or any changes made to the existing) PC 148.6 advisory forms by the Department of Justice.
5. ~~Interview the complainant and determine in what language the advisory form should be made available to him/her for reading and signing as prescribed in the Penal Code section 148.6.~~
6. 4. Provide the complainant with the applicable advisory form written in the a language understood by the complainant that he/she can read. If the advisory form is unavailable in the complainant's language, request from the Department of Justice to send a new PC 148.6 advisory form written in a language that can be read by the complainant.<sup>5</sup> See Section V. A. for uniform time allowance for this activity.
7. ~~Address any questions or concerns that the complainant may have regarding reading and signing the PC 148.6 advisory form.~~

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### A. Uniform Allowances (Time)

The uniform time allowances cover the cost of the salaries and benefits of the employees performing the ongoing activities listed in Part B. 1, and Part D. 3, #5, #6, and #7 in the Section IV; of these parameters and guidelines. For purposes of the following calculations, productive hours mean: "Time spent performing any kind of mental or physical work. Paid leave is not included."

#### Citizens Filing Complaints of Police Misconduct Under P.C. Section 148.6

For activities IV. B. 1. and D. 3. 5., IV. B. 6., and IV. B. 7., multiply as follows:

(the total number of P.C. Section 148.6 cases) x (0.033 367-hours<sup>6</sup>) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities).

The Commission has not identified any circumstances that would cause an eligible claimant to incur additional costs to perform any other activities not incorporated in Section IV; of these parameters and guidelines. Eligible claimants incurring any such costs within the scope of the reimbursable activities may submit a request to amend the parameters and guidelines to the Commission for such costs to be approved for reimbursement, subject to the provisions of Government Code section 17557 and California Code of Regulations, title 2, section 1183.2.

<sup>5</sup> Penal Code section 148.6, subdivision (a)(2) and (a)(3).

<sup>6</sup> Equivalent to 22 minutes.

## B. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement:

### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. ~~Attach a copy of the contract to the claim.~~ If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim and itemize all costs for those services. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

### 5. Travel

~~Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B.1, Salaries and Benefits, for each applicable reimbursable activity.~~

### 6. Training

~~Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of~~

~~the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services.~~

### C. Indirect Cost Rates

Indirect costs are defined as costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage, which the total amount allowable indirect costs bear to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>7</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING SAVINGS AND REIMBURSEMENTS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate ~~received~~ from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

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<sup>7</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.



**X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

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February 20, 2004

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

*And Interested Parties and Affected State Agencies (See Enclosed Mailing List)*

RE: **Adopted Statement of Decision**  
*False Reports of Police Misconduct, 00-TC-26*  
County of San Bernardino, Claimant  
Penal Code Section 148.6; Statutes 1995, Chapter 590 et al.

Dear Ms. Ter Keurst:

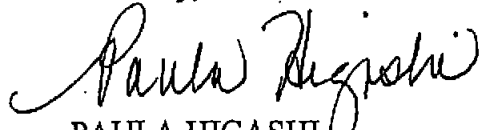
The Commission on State Mandates adopted the attached Statement of Decision on January 29, 2004. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office. Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq., the claimant is responsible for submitting proposed parameters and guidelines 30 days from the adoption of the Statement of Decision. However, in accordance with the Commission's February 2, 2004 correspondence, an extension of this deadline is granted to **March 22, 2004**. See Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq. for guidance in preparing and filing a timely submission.
- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 15 days of service. The claimant and other interested parties may submit written rebuttals. (See Cal. Code Regs., tit. 2, § 1183.11.)

- **Adoption of Parameters and Guidelines.** After review of the proposed parameters and guidelines and all comments, Commission staff will recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's original submission. (See Cal. Code Regs., tit. 2, § 1183.12.)

Please contact Tina Poole at (916) 323-8220 if you have any questions.

Sincerely,



PAULA HIGASHI  
Executive Director

Enclosures: Adopted Statement of Decision; Hearing Transcript

MAILED: \_\_\_\_\_  
FAXED: \_\_\_\_\_  
DATE: 2/20/04  
INITIAL: VS  
CHRON: \_\_\_\_\_  
FILE: \_\_\_\_\_  
WORKING BINDER: \_\_\_\_\_

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 148.6; Statutes 1995,  
Chapter 590; Statutes 1996, Chapter 586;  
Statutes 2000, Chapter 289;

Filed on July 2, 2001,

By County of San Bernardino, Claimant.

No. 00-TC-26


*False Reports of Police Misconduct*

STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted on January 29, 2004)*

**STATEMENT OF DECISION**

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.



PAULA HIGASHI, Executive Director

2-20-04

Date

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 148.6; Statutes 1995,  
Chapter 590; Statutes 1996, Chapter 586;  
Statutes 2000, Chapter 289;

Filed on July 2, 2001,

By County of San Bernardino, Claimant.

No. 00-TC-26

*False Reports of Police Misconduct*

STATEMENT OF DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500.ET  
SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted on January 29, 2004)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 29, 2004. Bonnie Ter Keurst appeared on behalf of the County of San Bernardino. Allan Burdick and Pamela Stone appeared on behalf of the California State Association of Counties. Susan Geanacou appeared on behalf of the Department of Finance (DOF).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 4-1.<sup>1</sup>

**BACKGROUND**

The Commission received a test claim filing on Penal Code section 148.6 from claimant, County of San Bernardino, on July 5, 2001.<sup>2</sup> Statutes 1995, chapter 590 (AB 1732) added section 148.6 to the Penal Code. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. It also required that any citizen filing a report must sign an informational advisory regarding the misdemeanor. AB 1732 was sponsored by the Los

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<sup>1</sup> The motion was to approve the staff recommendation, with guidance that the development of the parameters and guidelines take into account any effect on the *Peace Officers Bill of Rights* (CSM-4499) parameters and guidelines.

<sup>2</sup> The test claim filing was dated July 2, 2001. June 30 fell on a Saturday in 2001, therefore the filing deadline for establishing a July 1, 1999 reimbursement period pursuant to Government Code section 17557, subdivision (c), and the operative regulations, was delivery or postmark by Monday, July 2, 2001. The potential reimbursement period for this claim begins no earlier than July 1, 1999.

Angeles County Professional Peace Officers Association and supported by a number of law enforcement agencies and associations.<sup>3</sup> The goals of the legislation, according to a September 5, 1995 letter from Assemblywoman Paula Boland were to "discourage these malicious reports," which could be damaging to the personnel record of the officer accused, and also to "save the state a substantial amount of money ... [which] could then be used towards putting officers out on the street, thereby enhancing public safety."

In 2000, Penal Code section 148.6 was amended to add subdivision (a)(3): "The advisory shall be available in multiple languages."

### **Claimant's Position**

Claimant alleges that the test claim legislation requires the following reimbursable state-mandated activities:

- warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor;
- make the advisory available in the language of the complainant;
- explain the form to the citizen.

Claimant alleges costs from spending approximately 15 minutes explaining the form to the complainant. "Additionally, although the Department of Justice has provided translations of the forms, if the citizen desiring to make a complaint does not speak English, it takes additional time for staff to download and print the form in the language of the citizen complainant." Claimant estimates annual costs for complying with Penal Code section 148.6 at \$52,000.

### **State Agency's Position**

The Department of Finance's (DOF's) August 9, 2001 response to the test claim allegations argues that there is no reimbursable state mandate stemming from the test claim legislation. First, DOF asserts: "Although Section 148.6 of the Penal Code may result in costs to local entities, those costs are not reimbursable because they are not unique to local government." This argument is described and analyzed below, under "Issue 1."

Next, DOF critiques the time and cost estimates for the claimed activities, stating that some are discretionary, others are required by prior law, and ultimately, that providing the advisory on the legal consequences of filing a false report will result in a reduction of complaints filed, which "would more than offset any costs associated with this test claim." These individual contentions will be described in greater detail in the analysis below. No comments were received on the draft staff analysis.

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<sup>3</sup> Claimant was not identified as a sponsor or supporter of the legislation.

## COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution<sup>4</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>5</sup> "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."<sup>6</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>7</sup> In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.<sup>8</sup>

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>9</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

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<sup>4</sup> Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

<sup>5</sup> *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

<sup>6</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>7</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or "draconian" consequences. (*Id.*, at p. 754.)

<sup>8</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836.

<sup>9</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.



legislation.<sup>10</sup> Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>11</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>12</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>13</sup>

**Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?**

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>14</sup> Although the court has held that only one of these findings is necessary,<sup>15</sup> both will be analyzed here in order to address one of the arguments presented by DOF.

DOF contends that the test claim legislation does not impose a reimbursable state-mandated program because it is not unique to local government. This directly counters the claimant's assertion that:

The statutory scheme ... imposes a unique requirement on local government. Only local government hires peace officers, and only local government is required to accept complaints against peace officers. Only local government is required to present to citizen complainants a warning that the making of a false report can be a misdemeanor.

DOF correctly argues that the test claim statute affects all law enforcement agencies in the state, including the California Highway Patrol, the University of California, the Department of Fish

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<sup>10</sup> *Lucia Mar, supra*, 44 Cal.3d 830, 835.

<sup>11</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>12</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>13</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280.

<sup>14</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

<sup>15</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

and Game, and the Department of Corrections. DOF states that the California Supreme Court decision in *County of Los Angeles* supports its position.<sup>16</sup>

However, the Commission finds that DOF misapprehends the decision in *County of Los Angeles* for support of its argument that the statutes relating to peace officers are not unique to local government and therefore not subject to reimbursement under the California Constitution. *County of Los Angeles* involved state-mandated increases in workers' compensation benefits, which affected public and *private* employers alike. The California Supreme Court found that the term "program" as used in article XIII B, section 6, and the intent underlying section 6 "was to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred as an incidental impact of law that apply generally to all state residents and entities."<sup>17</sup> (Emphasis added.) Since the increase in workers' compensation benefits applied to all employees of private and public businesses, the court found that no reimbursement was required.

Here, the test claim legislation is to be followed by all law enforcement agencies, which by definition are public entities.<sup>18</sup> The statutes do not apply "generally to all state residents and entities," such as private businesses. Thus, the test claim legislation meets this test for "program" in that it does not impose requirements that apply generally to all residents and entities of the state, but only upon those public entities that employ peace officers.

Next, the Commission finds that the test claim legislation satisfies the other test that triggers article XIII B, section 6, carrying out the governmental function of providing a service to the public, to the extent that the test claim legislation requires law enforcement agencies to provide complainants with information concerning the right to file a complaint against a police officer, including an advisory of the misdemeanor charge that may be filed if the individual knowingly makes a false complaint. As discussed by the court in *Carmel Valley*, police protection is one "of the most essential and basic functions of local government."<sup>19</sup> Therefore, governmental functions required of law enforcement agencies, ultimately provide a service to the public. Accordingly, the Commission finds that providing the advisory constitutes a "program" and, thus, is subject to article XIII B, section 6 of the California Constitution.

However, this finding is only for city and county-level law enforcement agencies. School district employers of peace officers claims for these statutes are represented in a separate test claim filing, *False Reports of Police Misconduct, K-14 (02-TC-09)*. Therefore, the analysis that follows is limited to mandate findings on behalf of city and county (local agency) claimants.

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<sup>16</sup> *County of Los Angeles, supra*, 43 Cal.3d 46.

<sup>17</sup> *Id.* at pages 56-57; *City of Sacramento, supra*, 50 Cal.3d at page 67.

<sup>18</sup> Penal Code section 830 et seq.

<sup>19</sup> *Carmel Valley, supra*, 190 Cal.App.3d at page 537.

**Issue 2: Does the test claim legislation impose a new program or higher level of service within an existing program upon city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution?**

Penal Code Section 148.6

Penal Code section 148.6, as added by Statutes 1995, chapter 590, and amended by Statutes 1996, chapter 586, and Statutes 2000, chapter 289, follows:

- (a)(1) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.
- (2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:

**You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate citizens' complaints. You have a right to a written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.**

**It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.**

I have read and understood the above statement.

\_\_\_\_\_  
Complainant

- (3) The advisory shall be available in multiple languages.
- (b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

Statutes 1996, chapter 586 amended the original language, adding what is now subdivision (b), an additional misdemeanor for knowingly filing a false civil claim against a peace officer in his or her official capacity, with the intent to harass the officer. Statutes 2000, chapter 289 amended the section, adding subdivision (a)(3): "The advisory shall be available in multiple languages."

Claimant does *not* allege a reimbursable state mandate from the addition of the new misdemeanor charges to the Penal Code. The California Constitution and the Government Code expressly disallow a mandate finding for such reimbursement. Article XIII B, section 6 provides "that the Legislature may, but need not, provide such subvention of funds for the following mandates: ... (b) Legislation defining a new crime or changing an existing definition of a crime." In addition, Government Code section 17556, subdivision (g) provides that the Commission shall not find costs mandated by the state if the test claim statute "created a new crime or infraction ... but only for that portion of the statute directly relating to the enforcement of the crime or infraction." Thus Penal Code section 148.6, subdivision (a)(1) and subdivision (b) do not impose a new program or higher level of service on law enforcement agencies, and do not impose costs mandated by the state.

Claimant alleges that Penal Code section 148.6 imposes a reimbursable state mandate by requiring a law enforcement agency to: warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor; make the advisory available in the language of the complainant; and explain the form to the citizen.

Regarding the final alleged activity, DOF's response dated August 9, 2001, asserts:

[T]he test claim statute does not require local law enforcement agencies to read and explain the advisory form to potential complainants. Therefore, any costs resulting from the time that a local agency spends reading and explaining the form to potential complainants are not reimbursable because those actions are done at the discretion of that agency.

Claimant, in a letter dated February 21, 2002, responded that DOF's "expectation that citizens be handed a document to read and sign is not realistic," and:

presumes that the citizen:

1. Will have no questions, or
2. Will understand all terms used in the form, or
3. Is calm enough to take the time to read all the information, or
4. Can read in their spoken language, or
5. Can read, or
6. Will sign the document, or
7. Is even present. (They may have submitted their complaint in a letter mailed to the law enforcement agency.)

Despite claimant's concerns, the Commission first looks to the plain meaning of the statutory language when identifying a reimbursable state-mandated program. According to the California Supreme Court:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. "We begin by examining the statutory language, giving the words their usual and ordinary meaning." If the terms of the statute are unambiguous, we presume the

lawmakers meant what they said, and the plain meaning of the language governs.<sup>20</sup> (Citations omitted.)

The plain language of Penal Code section 148.6 does not require a law enforcement agency to read the document aloud, explain the document, answer questions, or make sure the complainant is "calm enough to take the time to read all the information." As further evidence that the statute does not require the advisory to be read aloud and explained to the complainant, Senate Bill 2133, as introduced, sought to amend Penal Code section 148.6 from "a peace officer shall require the complainant to read and sign the following advisory," to "a peace officer shall read the following advisory to the complainant, provide the complainant with a written copy of this advisory and require the complainant to acknowledge this advisory by his or her signature, prior to filing the complaint."<sup>21</sup> Instead, when the bill was chaptered as Statutes 2000, chapter 289, this amendment was removed and the Legislature only added a requirement that the advisory be available in multiple languages (discussed below). Thus, the Legislature considered an amendment requiring greater action on the part of peace officers, but chose not to implement it when adopting the final version of the bill. The Commission agrees with DOF's assertion that any explanatory or other additional activities are undertaken at the discretion of the law enforcement agency, and thus are not reimbursable. The Commission finds that the plain language of the statute imposes a new program or higher level of service for city and county law enforcement agencies when accepting an allegation of peace officer misconduct, for requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2).

Regarding the statutory requirement that "the advisory shall be available in multiple languages," claimant alleges that this provision means that the advisory shall be available in the language of the complainant. DOF, on the contrary, argues that having the advisory available in "only one language in addition to English would serve to comply with the law." DOF also references the Dymally-Alatorre Bilingual Services Act, and asserts this law previously required local agencies "to provide translated materials."

Government Code section 7290 et seq., known as the Dymally-Alatorre Bilingual Services Act,<sup>22</sup> requires state and local agencies to provide certain bilingual services to people who would otherwise be "precluded from utilizing public services because of language barriers." Specifically Government Code section 7295 requires local agencies to provide non-English translation of "any materials explaining services available" into language spoken by a "substantial number of the public served by the agency." The statute concludes: "The determination of when these materials are necessary when dealing with local agencies shall be left to the discretion of the local agency." Penal Code section 148.6, by specifically requiring that the advisory be available in multiple languages, has removed that determination from the local agency's discretion. Therefore, the Commission finds that the prior law of the Bilingual Services Act does not preclude a finding of a new program or a higher level of service.

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<sup>20</sup> *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

<sup>21</sup> Senate Bill 2133, as introduced.

<sup>22</sup> Statutes 1973, chapter 1182.

Claimant acknowledges that "the Department of Justice has provided translations of the forms," but asserts that if the complainant "does not speak English, it takes additional time for staff to download and print the form in the language of the citizen complainant."<sup>23</sup> DOF disagrees with this methodology and asserts "A more efficient process would be to download the form once from the Department of Justice website and make photocopies of that form to have available as needed." Claimant responds: "Local law enforcement agencies are better able to determine the frequency and number of forms needed in additional languages." The Commission finds that this is an appropriate issue to defer for parameters and guidelines. California Code of Regulations, title 2, section 1183.1 requires a successful test claimant to submit proposed parameters and guidelines including "a description of the most reasonable methods of complying with the mandate."

However, claimant and DOF have an additional disagreement requiring a legal finding: DOF asserts that having the form available in "only one language in addition to English would serve to comply with the law." Claimant contends, "because of the variety and non-conformity of non-English languages and dialects, might not the law enforcement agency encounter a situation in which a version of the form has not been developed by the Department of Justice?" The Commission finds that the statutory language calls for a practical interpretation that neither argument supports.

Again, subdivision (a)(3) simply requires "The advisory shall be available in multiple languages." DOF focuses on the word "multiple," and contends that it merely means "more than one." Although this is a recognized definition of the word, it is also a synonym to "many," "numerous," and "several." The Legislature, by use of the word "multiple" likely did not intend to require individual law enforcement agencies to provide translations in every conceivable language or dialect. Nor did it likely intend that agencies serving diverse immigrant populations would merely make available a single translation other than English, in order to comply with the bare minimum expressed in the statutory language. The Department of Justice, under the authority of the state Attorney General, has created translations of the advisory and made them available via its website, according to the test claim declarations, to law enforcement agencies statewide. Use of any or all of these translated advisories, as necessary, is a reasonable interpretation of the statutory meaning of "make the advisory available in multiple languages."

Thus, the Commission finds that Penal Code section 148.6, subdivision (a), sections (2) and (3), imposes a new program or higher level of service for city and county law enforcement agencies for the following activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). (Pen. Code, § 148.6, subd. (a)(2).)<sup>24</sup>
- Make the advisory available in multiple languages, utilizing the translations available from the State. (Pen. Code, § 148.6, subd. (a)(3).)<sup>25</sup>

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<sup>23</sup> Test Claim Filing, page 2.

<sup>24</sup> As added by Statutes 1995, chapter 590; reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

**Issue 3: Does the test claim legislation found to require a new program or higher level of service also impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. Claimant estimated costs of \$200 or more for the test claim allegations.<sup>26</sup> The Commission finds that claimant met this threshold showing.

The Commission shall not find costs mandated by the state, as defined in section 17514, in certain instances. (Gov. Code, § 17556.) Claimant states that none of the Government Code section 17556 exceptions apply. DOF disagrees, claiming potential offsetting savings to costs arising from the statute.<sup>27</sup> DOF argues that "having the form available in multiple languages will reduce the number of complaints filed, thereby providing substantial saving to law enforcement agencies." But DOF offers no evidence in support of its argument for this alleged offset. Accordingly, the Commission finds that none of the section 17556 exceptions apply. For the activities listed below, the Commission finds that they impose costs mandated by the state upon city and county law enforcement agencies within the meaning of Government Code section 17514.

### CONCLUSION

The Commission concludes that Penal Code section 148.6, subdivision (a), sections (2) and (3), imposes a new program or higher level of service for city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). (Pen. Code, § 148.6, subd. (a)(2).)<sup>28</sup>
- Make the advisory available in multiple languages, utilizing the translations available from the State. (Pen. Code, § 148.6, subd. (a)(3).)<sup>29</sup>

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<sup>25</sup> As amended by Statutes 2000, chapter 289; reimbursement period begins no earlier than January 1, 2001, the operative date of the statute.

<sup>26</sup> As required by Government Code section 17564 at the time the claim was filed. Current statute and regulations require claims filed to exceed \$1000.

<sup>27</sup> The Commission shall not find costs if "[t]he statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts . . ." (Gov. Code, § 17556, subd. (e).)

<sup>28</sup> As added by Statutes 1995, chapter 590; reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

The Commission denies any remaining alleged activities or costs, including any from Penal Code section 148.6, subdivision (a)(1), as added by Statutes 1995, chapter 590, and subdivision (b) as added by Statutes 1996, chapter 586, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

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<sup>29</sup> As amended by Statutes 2000, chapter 289; reimbursement period begins no earlier than January 1, 2001, the operative date of the statute.



**AUDITOR/CONTROLLER-RECORDER  
COUNTY CLERK**



**EXHIBIT B**  
CO.

**AUDITOR/CONTROLLER** • 222 West Hospitality Lane, Fourth Floor  
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830  
**RECORDER • COUNTY CLERK** • 222 West Hospitality Lane, First Floor  
San Bernardino, CA 92415-0022 • (909) 387-8308 • Fax (909) 386-8940

**LARRY WALKER**  
Auditor/Controller-Recorder  
County Clerk  
**ELIZABETH A. STARBUCK**  
Assistant Auditor/Controller-Recorder  
Assistant County Clerk

June 4, 2004

Commission on State Mandates  
980 Ninth Street, Suite 300,  
Sacramento, CA 95814

**RECEIVED**

JUN 04 2004

**COMMISSION ON  
STATE MANDATES**

**RE: COUNTY OF SAN BERNARDINO'S SB90 PROPOSED PARAMETERS &  
GUIDELINES (Ps & Gs)**

Attached please find the County of San Bernardino's SB90 proposed parameters and guidelines for the state mandated program identified in the following statute:

Chapter 590, Statutes of 1995: False Reports of Police Misconduct, 00-TC-26 – Penal Code Section 148.6.

If you have any questions, please call me at (909) 386-8854.

Sincerely,

Jai Prasad  
Reimbursable Projects Section Accountant

**PROPOSED PARAMETERS AND GUIDELINES**

Penal Code Section 148.6

Statutes of 1995, Chapter 590

Statutes of 1996, Chapter 586

Statutes of 2000, Chapter 289

*False Reports of Police Misconduct (00-TC-26)*

County of San Bernardino, Claimant

**I. SUMMARY OF THE MANDATE**

Statutes of 1995, Chapter 590; Statutes of 1996, Chapter 586; and Statutes of 2000, Chapter 289 added or amended Penal Code section 148.6 relating to the false police misconduct report filings. These statutes:

- Make it a misdemeanor to file an allegation of misconduct against any peace officer, knowing the report to be false.
- Require any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign a specified information advisory.
- Make it an additional misdemeanor for knowingly filing a false civil claim against a peace officer or placing lien against his or her property, with the intent to harass or dissuade the officer from carrying out his or her official duties.
- Require the advisory to be available in multiple languages.

On January 29, 2004, the Commission on State Mandates (Commission) adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state-mandated program upon local governments within the meaning of Article XIII B, Section 6, of the California Constitution and Government Code section 17514 for the following activities:

- Requiring the complainant read and sign the advisory prescribed in Penal Code section 148.6, when accepting an allegation of peace officer misconduct.
- Making the advisory available in multiple languages through utilizing the translations available from the State.

**II. ELIGIBLE CLAIMANTS**

Any city, county, city and county, or special district employing peace officers and incurring increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

**III. PERIOD OF REIMBURSEMENT**

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on Monday, July 2, 2001. Since June 30 fell on a Saturday in 2001, and the test claim was postmarked to the Commission on Monday, July 2, 2001, the Government Code section 17557, subdivision (C), and the operative regulations establish July 1, 1999 as the initial period for which reimbursement can be filed. Thus, costs incurred for compliance with Statutes 1995, Chapter 590 and Statutes 1996, Chapter 586 are eligible for reimbursement on or after July 1, 1999.

Statutes 2000, Chapter 289 was operative January 1, 2001. Therefore, costs incurred for compliance with Statutes 2000, Chapter 289 are reimbursable on or after January 1, 2001.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

**IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

**Proposed Parameters and Guidelines  
False Reports of Police Misconduct**

For each eligible claimant, the following activities are reimbursable:

**A. One-Time Activities**

1. Train those employees that actually perform the reimbursable activities listed in Section IV, A and B, of these parameters and guidelines. (One-time activity per employee.)
2. Create advisory form folder to file multi-language PC 148.6 advisory forms, which are created and released by the Department of Justice.
3. Establish an intranet site where PC 148.6 advisory forms are saved electronically, and are available for downloading by the interested parties.
4. Develop policies and procedures to implement the reimbursable activities listed in Section IV, A and B, of these parameters and guidelines.

**B. On Going Activities**

1. Update and implement policies and procedures as needed. (*Reimbursement period begins July 1, 1999.*)
2. Update the multi-language advisory form folder as the new PC 148.6 advisory forms become available through the Department of Justice.
3. Update the intranet site as the Department of Justice releases the new PC 148.6 advisory forms electronically for downloading purposes.
4. Inform the local law enforcement agency employees about the availability of the new, or any changes made to the existing PC 148.6 advisory forms by the Department of Justice.
5. Interview the complainant, and determine in what language the advisory form should be made available to him/her for reading and signing as prescribed in the Penal Code section 148.6.
6. Provide the complainant with the applicable advisory form written in the language that he/she can read. If the advisory form is unavailable in the complainant's language, request the Department of Justice to send a new PC 148.6 advisory form written in a language that can be read by the complainant.
7. Address any questions or concerns that the complainant may have regarding reading and signing of the PC 148.6 advisory form.

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### A. Uniform Allowances (Time)

The uniform time allowances cover the cost of the salaries and benefits of the employees performing the ongoing activities listed in Part B, #5, #6, and #7 in the Section IV of these parameters and guidelines. For purposes of the following calculations, productive hours mean: "Time spent performing any kind of mental or physical work. Paid leave is not included."

#### Citizens Filing Complaints of Police Misconduct Under P. C. Section 148.6

For activities IV. B. 5., IV. B. 6., and IV. B. 7., multiply as follows:

*(the total number of P. C. Section 148.6 cases) x (0.367 hours<sup>1</sup>) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities)*

The Commission has not identified any circumstances that would cause an eligible claimant to incur additional costs to perform any other activities not incorporated in Section IV of these parameters and guidelines. Eligible claimants incurring any such costs within the scope of the reimbursable activities may submit a request to amend the parameters and guidelines to the Commission for such costs to be approved for reimbursement, subject to the provisions of California Code of Regulations, title 2, section 1183.2.

### B. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement:

#### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

<sup>1</sup> Equivalent to 22 minutes.

**Proposed Parameters and Guidelines  
False Reports of Police Misconduct**

## 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

## 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed and itemize all costs for those services.

## 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B.1, Salaries and Benefits, for each applicable reimbursable activity.

## 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), date attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services.

**C. Indirect Cost Rates**

Indirect costs are defined as costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage, which the total amount allowable indirect costs bear to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bear to the base selected.

## VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

## VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.



**Proposed Parameters and Guidelines  
False Reports of Police Misconduct**

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

**San Bernardino County Sheriff  
Department of Internal Affairs**

**SB 90 Mandated Program  
False Reports of Police Misconduct  
Proposed Parameters & Guidelines  
Time Study for Reimbursable Activities**

- i) Identify all the Sheriff stations.**
  - All the Sheriff stations have been identified, and the total number of stations are 40.
  
- j) Identify the 10 Sheriff stations (10% of the population) that recorded the highest number of citizens' complaints against the peace officers.**
  - The 10 Sheriff stations are identified in a table showing the total number of complaints made against the peace officers.
  
- k) Randomly select 10% or minimum 3 cases from the total cases reported at each Sheriff station, and determine the total time documented to perform the following reimbursable mandated activities:**
  - i) Interview the complainant, and determine in what language the advisory form should be made available to him/her for reading and signing as prescribed in the Penal Code section 148.6.**
  - ii) Provide the complainant with the applicable advisory form written in the language that he/she can read.**
  - iii) Address any questions or concerns that the complainant may have regarding reading and signing of the PC 148.6 advisory form.**
  
- d) Determine the total time it takes to perform the above reimbursable activities for each PC 148.6 case by each station.**
  
- e) Calculate the total average time it takes for a station to perform the above reimbursable activities for one PC 148.6 case.**
  
- d) Calculate the total average time it takes for the San Bernardino County Sheriff to perform the above reimbursable activities for one PC 148.6 case.**

S:\SB00\SB00 Parameters and Guidelines\False Reports of Police Misconduct(PC 148.6 Timestudy.xls)List

**San Bernardino County Sheriff  
Department of Internal Affairs**

**SB'90 Mandated Program  
False Reports of Police Misconduct  
Sheriff Station List**

Sheriff Stations	Total PC 148.6 Complaints	Average Time Per Case (minutes)	Total PC 148.6 Case Time (minutes)	Total PC 148.6 Case Time (hours)
Central	32	22	704	11:73
Chino Hills	13	22	286	4:77
Fontana	9	22	198	3:30
Yucaipa	11	22	242	4:03
Twin Peaks	2	22	44	0:73
Big Bear	9	22	198	3:30
Victor Valley	5	22	110	1:53
Barstow	3	22	66	1:10
Morongo	42	22	924	15:40
Colorado River	9	22	198	3:30
Rancho Cucamonga	48	22	1056	17:60
Highland	7	22	154	2:57
Victorville City	29	22	638	10:63
Apple Valley	24	22	528	8:80
Hesperia	29	22	638	10:63
Adelanto	12	22	264	4:40
Rhelan	2	22	44	0:73
CDC	1	22	22	0:37
GHRC	1	22	22	0:37
WVDC	26	22	572	9:53
Aviation	0	22	0	0:00
Crime Lab	0	22	0	0:00
Valley Communications	1	22	22	0:37
Desert Communications	0	22	0	0:00
Specialized	1	22	22	0:37
Narcotics	2	22	44	0:73
Internal Affairs	119	22	2618	43:63
IRNET	0	22	0	0:00
C/S Admin.	0	22	0	0:00
C/S Central	8	22	176	2:53
C/S Civil	0	22	0	0:00
C/S Juvenile	0	22	0	0:00
C/S Chino	3	22	66	1:10
C/S Fontana	1	22	22	0:37
C/S Redlands	1	22	22	0:37
C/S Victorville	5	22	110	1:53
C/s Big Bear	0	22	0	0:00
C/S Barstow	0	22	0	0:00
C/S Joshua Tree	0	22	0	0:00
C/S Rancho Cucamonga	1	22	22	0:37
<b>Total</b>	<b>456</b>		<b>10032</b>	<b>167:20</b>
<b>Total San Bernardino County Sheriff Stations</b>			<b>40</b>	

Top ten stations that received most PC 148.6 case complaints.

P.13/14  
 San Bernardino County Sheriff  
 Department of Internal Affairs

P.13

**SB 90 Mandated Program  
 False Reports of Police Misconduct  
 Proposed Parameters & Guidelines  
 Time Study for Reimbursable Activities**

Sheriff Station	Number of Cases Recorded	Minimum # of Cases to be Studied	Case Identification Number	Time to Perform Reimbursable Activity C) i) (minutes)	Time to Perform Reimbursable Activity C) ii) (minutes)	Time to Perform Reimbursable Activity C) iii) (minutes)	Total Time to Perform Reimbursable Activities (minutes)	Average Time per Case for Each Station (minutes)
								30
<b>2 Apple Valley</b>	<b>24</b>	<b>3</b>	000107	30	2	2	34	
			000109	20	2	2	24	
			000117	10	2	2	14	
<b>Total</b>				60	6	6	72	24
<b>3 Central</b>	<b>32</b>	<b>3</b>	000107	20	2	2	24	
			000142	20	2	2	24	
			000150	30	2	2	34	
<b>Total</b>				70	6	6	82	27
<b>4 Chino Hills</b>	<b>13</b>	<b>3</b>	000153	10	2	2	14	
			000160	10	2	2	14	
			000163	10	2	2	14	
<b>Total</b>				30	6	6	42	14

26

								24
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<b>6 Internal Affairs</b>	<b>119</b>	<b>12</b>	000567	10	2	2	14	
			000572	10	2	2	14	
			000609	10	2	2	14	
			000617	10	2	2	14	
			000633	15	2	2	19	

JUN-04-2004 11:37

JUN-04-2004 12:51

Sheriff Station	Number of Cases Recorded	Minimum # of Cases to be Studied	Case Identification Number	Time to Perform Reimbursable Activity C) i) (minutes)	Time to Perform Reimbursable Activity C) ii) (minutes)	Time to Perform Reimbursable Activity C) iii) (minutes)	Total Time to Perform Reimbursable Activities (minutes)	Average Time per Case for Each Station (minutes)
			000635	10	2	2	14	
			000636	15	2	2	19	
			000653	15	2	2	19	
			000654	10	2	2	14	
			000673	15	2	2	19	
			000677	10	2	2	14	
			000685	20	2	2	24	
<b>Total</b>				<b>150</b>	<b>24</b>	<b>24</b>	<b>198</b>	<b>17</b>

<b>7 Morongo</b>	<b>42</b>	<b>4</b>	000187	20	2	2	24	
			000195	15	2	2	19	
			000198	30	2	2	34	
			000205	20	2	2	24	
<b>Total</b>				<b>85</b>	<b>8</b>	<b>8</b>	<b>101</b>	<b>25</b>

<b>8 Rancho Cucamonga</b>	<b>48</b>	<b>5</b>	000219	10	2	2	14	
			000221	15	2	2	19	
			000223	10	2	2	14	
			000225	15	2	2	19	
			000233	10	2	2	14	
<b>Total</b>				<b>60</b>	<b>10</b>	<b>10</b>	<b>80</b>	<b>16</b>

<b>9</b>								<b>31</b>
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<b>10 WVDC</b>	<b>26</b>	<b>3</b>	000130	10	2	2	14	
			000140	15	2	2	19	
			000151	10	2	2	14	
<b>Total</b>				<b>35</b>	<b>6</b>	<b>6</b>	<b>47</b>	<b>18</b>

**TOTAL AVERAGE TIME PER CASE FOR COUNTY SHERIFF TO PERFORM REIMBURSABLE PC 148.6 ACTIVITIES:**

Sum of all average minutes per case studied for each Sheriff station above 223  
 Divided by: Total number of Sheriff stations studied 10  
**Total average time per case for County Sheriff to perform reimbursable PC 148.6 activities:** 22





STEVE WESTLY  
 California State Controller  
 Division of Accounting and Reporting

July 8, 2004

RECEIVED

Ms. Nancy Patton  
 Assistant Executive Director  
 Commission on State Mandates  
 980 Ninth Street, Suite 300  
 Sacramento, CA 95814

JUL 12 2004

COMMISSION ON  
 STATE MANDATES

RE: PROPOSED PARAMETERS AND GUIDELINES  
 FALSE REPORTS OF POLICE MISCONDUCT, 00-TC-26  
 STATUTES 1995, CHAPTER 590; STATUTES 1996, CHAPTER 586;  
 STATUTES 2000, CHAPTER 289

Dear Ms. Patton:

We have reviewed the proposed Parameters and Guidelines (P's & G's) submitted by the County of San Bernardino for the above referenced subject. Our recommendations for changes to the proposed P's & G's are attached; additions are underlined, deletions have a strike-through.

We recommend that these changes be taken into consideration for further clarification of the reimbursable components. If you have any questions, please contact Ginny Brummels, Manager of the Local Reimbursements Section, at (916) 324-0256.

Sincerely,

JOHN A. KORACH, Chief  
 Division of Accounting and Reporting

Enclosure

JAK:glb

cc: Interested parties

**COMMENTS ON PARAMETERS AND GUIDELINES  
FALSE REPORTS OF POLICE MISCONDUCT 00-TC-26  
STATUTES OF 1995, CHAPTER 590**

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are reimbursable:

A. One-Time Activities

- ~~3. Establish an intranet site where PC 148.6 advisory forms are saved electronically, and are available for downloading by the interested parties.~~

Downloaded electronic forms should be saved in an existing electronic medium like a hard disk space. Additional costs to establish an intranet site to save downloaded files are at the discretion of the entity and should not be subject to reimbursement.

B. On Going Activities

- ~~3. Update the intranet site as the Department of Justice releases the new Penal Code (PC) 148.6 advisory forms electronically for downloading purposes.~~

Development of an intranet site in order to capture releases of the advisory forms is at the discretion of the entity since the forms could be saved through other existing electronic mediums. Therefore, this activity should not be reimbursable.

~~4. 3.~~

~~5. 4.~~

~~6. 5.~~

Renumber the above activity items to reflect the proposed deletion of activity item #3 above.

- ~~7. Address any questions or concerns that the complainant may have regarding reading and signing of the PC 148.6 advisory form.~~



The Statement of Decision did not specifically find this activity reimbursable. From the Statement of Decision, entities are only reimbursed for requiring complainants to read and sign the advisory.

V. CLAIM PREPARATION AND SUBMISSION

A. Uniform Allowances (Time)

The uniform time allowances cover the cost of the salaries and benefits of the employees performing the ongoing activities listed in Section IV. Part B. ~~#45, and #5,6, and #7.~~ of these parameters and guidelines. For purposes of the following calculations, productive hours mean: "Time spent performing any kind of mental or physical work. Paid leave is not included."

B. Citizens Filing Complaints of Police Misconduct Under P.C. Section 148.6

For activities IV. B. ~~4.5,~~ and IV. B. ~~5.6,~~ and IV. B. ~~7,~~ multiply as follows:

The changes above reflect the proposed deletion of activity item # 7 and renumbering of activity items # 5 and # 6 at Section IV, Part B.

**PROOF OF SERVICE BY MAIL**

CSM – 00-TC-26

I, the undersigned, declare as follows:

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and not a party to the within action. My place of employment and business address is 3301 C Street, Suite 500, Sacramento, California 95816.

On July 8, 2004, I served the attached recommendation of the State Controller's Office by placing a true copy thereof enclosed in a sealed envelope addressed to each of the persons named below at the addresses shown and by depositing said envelopes in the United States mail at Sacramento, California, with postage thereon fully prepaid.

Ms. Harmeet Barkschat  
Mandate Resource Services  
5325 Elkhorn Blvd. #307  
Sacramento, CA 95842

Mr. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Blvd., Suite 106  
Roseville, CA 95661

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. Bob Campbell  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Ms. Annette Chinn  
Cost Recovery Systems  
705-2 East Bidwell Street, #294  
Folsom, CA 95630

Mr. Keith Gmeinder  
Department of Finance (A-15)  
915 L Street, 8<sup>th</sup> Floor  
Sacramento, CA 95814

Mr. Jim Jagers  
Centration, Inc.  
12150 Tributary Point Drive, Suite 140  
Gold River, CA 95670

Mr. Steve Keil  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814-3941

Mr. Paul Minney  
Spector, Middleton, Young & Minney, LLP  
7 Park Center Drive  
Sacramento, CA 95825

Mr. Keith Petersen  
SixTen & Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Mr. Steve Smith  
Steve Smith Enterprises, Inc.  
4633 Whitney Avenue, Suite A  
Sacramento, CA 95821

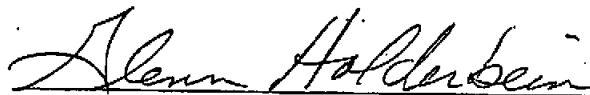
Ms. Pam Stone  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Mr. David Wellhouse  
David Wellhouse and Associates, Inc.  
9175 Kiefer Blvd, Suite 121  
Sacramento, CA 95826

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 8, 2004, at Sacramento, California.



Glenn Holderbein



# AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



COUNTY OF SAN BERNARDINO

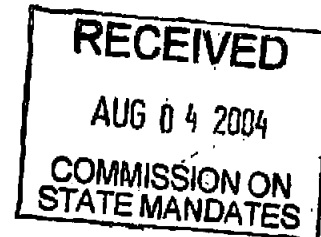
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San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

August 2, 2004

Ms. Nancy Patton  
Assistant Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814



RE: **Proposed Parameters and Guidelines**  
False Reports of Police Misconduct, 00-TC-26  
County of San Bernardino, Claimant  
Statutes of 2000, Chapter 289  
Statutes of 1996, Chapter 586  
Statutes of 1995, Chapter 590  
Penal Code Section 148.6

Dear Ms. Patton:

We have reviewed the State Controller's (SCO) recommended changes to the reimbursable components stated in the above-proposed parameters and guidelines (Ps & Gs) dated July 8, 2004. The County of San Bernardino is submitting the below information in rebuttal to the SCO's recommended changes.

D) Reimbursable components subject to State Controller's recommendation:

A. One-Time Activities

3. Establish an intranet site where PC 148.6 advisory forms are saved electronically, and are available for downloading by the interested parties.

B. On Going Activities

3. Update the intranet site as the Department of Justice releases the new Penal Code (PC) 148.6 advisory forms electronically for downloading purposes.

State Controller's Recommendation:

Downloaded electronic forms should be saved in an existing electronic medium like a hard disk space. Additional costs to establish an intranet site to save downloaded files are at the discretion of the entity and should not be subject to reimbursement.

San Bernardino County's Rebutting Comment:

Though it is true that the manner in which PC148.6 advisory forms are saved is at the discretion of the entity, it is not at the entity's discretion to save or not save the form. The nature of the statute requires the form to be saved and thus the cost to do so is reimbursable.

It is unreasonable to expect that once a system is in place to store PC148.6 advisory forms it would never be exchanged for a new system or updated in anyway. Quite the contrary, the logical extension of the requirement to save the forms demands the entity maintain and even change the system because technology is in a constant state of flux and periodically renders systems useless.

Therefore, since the statute requires PC148.6 advisory forms to be saved it also requires that entities take steps to ensure the forms are saved and remain usable. Thus, the costs associated with establishment and maintenance of such a system is reimbursable.

II) Reimbursable component subject to State Controller's recommendation:

B. On Going Activities

- 7: Address any questions or concerns that the complainant may have regarding reading and signing of the PC 148.6 advisory form.

State Controller's Recommendation:

The Statement of Decision did not specifically find this activity reimbursable. From the Statement of Decision, entities are only reimbursed for requiring complainants to read and sign the advisory.

San Bernardino County's Rebutting Comment:

The statute requires that PC148.6 advisory forms be provided to complainants. It strains credulity for one to assume the legislature did not foresee that this would necessitate entities constrained by this statute to address the questions and concerns of complainants in regards to the advisory forms. Entities must, as part of the requirement to distribute the forms, answer in some meaningful way any questions complainants might have. In addition, there could arise a situation where the complainant is either blind or illiterate, necessitating the entity provide someone to read and explain the forms in order to comply with statutory obligations.

Therefore, the statute requires entities to address any questions and concerns the complainant may have and, in some instances, to fully explain the forms to complainants. Thus, this activity is reimbursable.

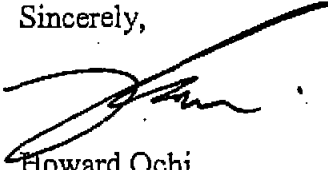
Claimant Rebuttal to SCO Recommended Changes

8/2/2004

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If you have any questions, please contact Bonnie Ter Keurst, Reimbursable Projects Section Manager, at (909) 386-8850.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Ochi", written over a horizontal line.

Howard Ochi  
Chief Deputy Auditor/Controller-Recorder

Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 6/8/2004  
List Print Date: 06/10/2004  
Claim Number: 00-TC-26  
Issue: False Reports of Police Misconduct

Mailing Information: Completeness Determination

Mailing List

Related

02-TC-09 False Reports of Police Misconduct (K-14)

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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**COMMISSION ON STATE MANDATES**

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February 10, 2005

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List)*

**Re: Draft Staff Analysis and Proposed Parameters and Guideline**  
*False Reports of Police Misconduct, 00-TC-26*  
County of San Bernardino, Claimant  
Penal Section 148.6, subdivisions (a)(2) and (a)(3)  
Statutes 1995, Chapter 590  
Statutes 2000, Chapter 289

Dear Ms. Ter Keurst:

The draft staff analysis and proposed parameters and guidelines are complete and enclosed for your review and comment.

**Written Comments**

Any party or interested party may file written comments on the draft staff analysis and proposed parameters and guidelines by **February 23, 2005**. The Commission's regulations require comments filed with the Commission to be simultaneously served on the parties and interested parties and to be accompanied by a proof of service. To request an extension of time to file comments, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

**Hearing**

The proposed parameters and guidelines are tentatively set for hearing on **March 30, 2005** at 9:30 a.m. at the **Department of Social Services Auditorium, 744 P Street, First Floor, Sacramento, California**. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Ms. Bonnie Ter Keurst

February 10, 2005

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### Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Tina Poole at (916) 323-8220.

Sincerely,



NANCY PATTON

Assistant Executive Director

Enclosure

J:\MANDATES\2000\tc\00-tc-26\PsGs\dsatrans

ITEM \_\_\_\_

**DRAFT STAFF ANALYSIS  
PROPOSED PARAMETERS AND GUIDELINES,  
AS MODIFIED BY STAFF**

Penal Code Section 148.6, Subdivisions (a)(2) and (a)(3)

Statutes 1995, Chapter 590

Statutes 2000, Chapter 289

*False Reports of Police Misconduct (00-TC-26)*

County of San Bernardino, Claimant

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**EXECUTIVE SUMMARY**

The Executive Summary will be included in the Final Staff Analysis.

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## STAFF ANALYSIS

### Claimant

County of San Bernardino

### Chronology

02/20/04 Commission on State Mandates (Commission) adopted Statement of Decision  
06/04/04 Claimant submitted proposed parameters and guidelines  
07/12/04 The State Controller's Office (SCO) submitted comments  
08/02/04 Claimant submitted rebuttal to SCO comments  
02/09/05 Draft staff analysis issued

### Summary of the Mandate

The test claim statutes added or amended Penal Code section 148.6. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. These statutes require any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign a specified information advisory. These statutes also require the advisory to be available in multiple languages.

On February 20, 2004, the Commission adopted its Statement of Decision finding that Penal Code section 148.6, subdivision (a), sections (2) and (3) impose a reimbursable state-mandated program on city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.<sup>1</sup> The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

### Discussion

Staff reviewed the claimant's proposed parameters and guidelines<sup>2</sup> and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines:

#### *IV. Reimbursable Activities*

##### Training

The claimant's proposal included the one-time activity of training employees that perform the reimbursable activities. Staff deleted training because it is not identified in the Statement of Decision as a reimbursable activity. Nor is it reasonably necessary to comply with the test

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit B.

claim legislation, because the test-claim legislation was enacted in 1995, four years before the beginning of the reimbursement period for this program. Thus, if employees were trained to comply with the mandated program, it would have occurred before July 1, 1999.

#### Forms and Folders

The proposed parameters and guidelines included the activities for establishing and updating an intranet site for saving and downloading PC 148.6 advisory forms. In their comments, the SCO stated that additional costs to establish an intranet site to save downloaded files are at the discretion of the entity and should not be subject to reimbursement. The SCO states that instead, the downloaded electronic forms should be saved in an existing electronic medium.<sup>3</sup> In their rebuttal to the SCO comments, the claimant agrees that the manner in which forms are saved is at the discretion of the entity, but argues that the manner in which they choose is reimbursable.<sup>4</sup> Staff finds that establishing and maintaining an intranet site goes beyond the scope of the mandate. There is no need to create an entirely new intranet site to store documents when they can be easily stored in an existing electronic format. Therefore, this activity is not reasonably necessary to comply with the test claim legislation. Staff deleted this activity.

However, the claimant also proposed the one-time activity of creating an advisory form folder to file the PC 148.6 advisory forms that are created and released by the Department of Justice (DOJ). Staff finds that downloading the advisory form in an electronic format and saving it in a folder, whether electronic or paper, and creating that folder, whether electronic or paper, are efficient procedures for administering a forms process, and are reasonably necessary to carry out the mandate.

Therefore, staff revised the language to clarify that creating a folder to store the forms, in both electronic and paper formats, and downloading the electronic form, are reimbursable.

The claimant also proposed the ongoing activity of updating the folder as new forms are released by DOJ. Although these activities were not stated in the Statement of Decision, staff finds that this activity is considered an efficient procedure for administering a forms process, and is reasonably necessary to comply with the mandate. Therefore, staff retained this activity, but clarified that updating the forms folder is reimbursable if additional forms become available through the Department of Justice.

#### Law Enforcement Notification

The claimant's proposal included an ongoing activity of informing the local law enforcement agency employees about the availability of the new or revised PC 148.6 advisory forms by the DOJ. Although this activity was not stated in the Statement of Decision, staff finds that ensuring that local agency employees are kept informed about current forms is reasonably necessary to comply with the mandate. Therefore, staff retained this activity.

#### Policies and Procedures

The claimant's proposal included a one-time activity to develop policies and procedures and an ongoing activity to update the policies and procedures as needed. This mandate added specific new activities for law enforcement agencies when accepting allegations of peace officer misconduct. As a result, policies and procedures for accepting allegations of peace officer

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<sup>3</sup> Exhibit C.

<sup>4</sup> Exhibit D.

misconduct should already exist. Therefore, staff deleted the activity of *developing* policies and procedures. However, staff finds that the one-time activity of *updating* existing policies and procedures to include these new activities is reasonably necessary to comply with the mandate, and modified the language accordingly.

#### Complainant Interviews

The claimant proposed that interviewing the complainant to determine the language the advisory form should be made available should be a reimbursable activity. The claimant also proposed that addressing any questions or concerns from the complainant regarding the reading and signing of the advisory form be reimbursable. As stated in the Statement of Decision, this mandate only requires law enforcement agencies accepting an allegation of misconduct against a peace officer to have the complainant read and sign the advisory. This mandate does not require any explanatory or other additional activities on the part of law enforcement agencies. Therefore, staff deleted these activities.

#### Period of Reimbursement

As stated under Section III. Period of Reimbursement, there are two distinct reimbursement periods for this program. Penal Code section 148.6, subdivision (a)(2), requires local law enforcement agencies to provide the complainant with the advisory form. This requirement is effective July 1, 1999. Penal Code section 148.6, subdivision (a)(3), effective January 1, 2001, requires local law enforcement agencies to provide the form in multiple languages. Therefore, staff clarified that providing the form under section 148.6, subdivision (a)(2), is reimbursable from July 1, 1999 through December 31, 2000, and providing the form in multiple languages under section 148.6 subdivision (a)(2) and (a)(3) is reimbursable beginning January 1, 2001.

#### ***V. Claim Preparation and Submission***

The claimant proposed a uniform time allowance of 22 minutes for three of the proposed ongoing activities (identified in the claimant's proposal as activities IV.B.5, IV.B.6, and IV.B.7.). However, staff deleted two of these proposed activities (IV.B.5 and IV.B.7.). Therefore, staff modified this section to reduce the uniform time allowance to two minutes. This reflects the uniform time allowance for the remaining activity of providing the complainant with the advisory form written in a language understood by the complainant.

Finally, staff deleted reimbursement for travel and training under this section, since travel and training are not included in the Statement of Decision. Nor are they reasonably necessary to carry out the mandate. There is nothing in the program that requires travel to complete the required activities. And, the test claim legislation was enacted in 1995, which means that employees should have been trained prior to the beginning of the reimbursement period for this program (July 1, 1999).

#### ***VI., VIII., and IX. Boilerplate Language***

Sections V., VIII., and IX. include boilerplate language for Record Retention, State Controller's Claiming Instructions, and Remedies before the Commission. Staff made technical changes to these sections to include the changes made in 2004 by Statutes 2004, chapter 890 (AB 2856).



### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed parameters and guidelines, beginning on page 7.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.



**PROPOSED PARAMETERS AND GUIDELINES,  
AS MODIFIED BY STAFF**

Penal Code Section 148.6, Subdivisions (a)(2) and (a)(3)

Statutes of 1995, Chapter 590

Statutes of 1996, Chapter 586

Statutes of 2000, Chapter 289

*False Reports of Police Misconduct (00-TC-26)*

County of San Bernardino, Claimant

**I. SUMMARY OF THE MANDATE**

Statutes of 1995, Chapter 590; Statutes of 1996, Chapter 586; and Statutes of 2000, Chapter 289 added or amended Penal Code section 148.6. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer relating to the false police misconduct report filings. These statutes:

- ~~Make it a misdemeanor to file an allegation of misconduct against any peace officer, knowing the report to be false.~~
- Require any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign a specified information advisory.
- ~~Make it an additional misdemeanor for knowingly filing a false civil claim against a peace officer or placing lien against his or her property, with the intent to harass or dissuade the officer from carrying out his or her official duties.~~
- Require the advisory to be available in multiple languages.

On January 29, 2004, the Commission on State Mandates (Commission) adopted its the Statement of Decision for *False Reports of Police Misconduct (00-TC-26)*. The Commission found that Penal Code section 148.6, subdivision (a), sections (2) and (3), the test claim legislation constitutes a new program or higher level of service and impose a reimbursable state-mandated program upon city and county law enforcement agencies local governments within the meaning of Article XIII B, Section 6; of the California Constitution and Government Code section 17514. Accordingly, the Commission approved this test claim for the following reimbursable activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2), when accepting an allegation of peace officer misconduct.
- Making the advisory available in multiple languages, through-utilizing the translations available from the State, as prescribed in Penal Code section 148.6, subdivision (a)(3).

The Commission denied any remaining alleged activities or costs, including any from Penal Code section 148.6, subdivision (a)(1), as added by Statutes 1995, chapter 590, and subdivision (b) as added by Statutes 1996, chapter 586, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state within the

meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

## II. ELIGIBLE CLAIMANTS

Any city, county, city and county, or special district employing peace officers and incurring increased costs as a direct result of this mandate ~~is~~ are eligible to claim reimbursement of these costs.

## III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on Monday, July 2, 2001. Since June 30 fell on a Saturday in 2001, the filing deadline for establishing a July 1, 1999 reimbursement period pursuant to and the test claim was postmarked to the Commission on Monday, July 2, 2001, the Government Code section 17557, subdivision (c), and the operative regulations, was delivery or postmark by Monday, July 2, 2001, establish July 1, 1999 as the initial period for which reimbursement can be filed. Thus, costs incurred for compliance with Statutes 1995, Chapter 590 and Statutes 1996, Chapter 586 are eligible for reimbursement on or after July 1, 1999. Statutes 2000, Chapter 289 was operative January 1, 2001. Therefore, costs incurred for compliance with Statutes 2000, Chapter 289 are reimbursable on or after January 1, 2001.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, ~~training packets,~~ and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

Reimbursement Period July 1, 1999 through December 31, 2000<sup>1</sup>:

In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2).<sup>2</sup>

A. One-Time Activities

1. ~~Train those employees that actually perform the reimbursable activities listed in Section IV, A and B, of these parameters and guidelines. (One-time activity per employee.)~~
2. ~~Create advisory form folder to file multi-language PC 148.6 advisory forms, which are created and released by the Department of Justice.~~
3. ~~Establish an intranet site where PC 148.6 advisory forms are saved electronically, and are available for downloading by the interested parties.~~
- 2.1. ~~Develop/Update policies and procedures to implement the reimbursable activities listed in Section IV., B, of these parameters and guidelines.~~

B. On-going Activities

1. Provide the complainant with the PC 148.6 advisory form. See Section V. A. for uniform time allowance for this activity.

Reimbursement Period Begins January 1, 2001<sup>3</sup>:

Make the advisory available in multiple languages, utilizing the translations available from the state.<sup>4</sup>

C. One-Time Activities

1. Create and electronic and/or paper advisory form folder to file multi-language PC 148.6 advisory forms, which are created and released by the Department of Justice.
2. Update policies and procedures to implement the reimbursable activities listed in Section IV., C, and D, of these parameters and guidelines.

D. Ongoing Activities

1. ~~Update and implement policies and procedures as needed. (Reimbursement period begins July 1, 1999.)~~
- 2.1. Downloading the PC 148.6 advisory form and saving it to an electronic and/or paper advisory form folder.

<sup>1</sup> Pursuant to Government Code section 17557, subdivision (c).

<sup>2</sup> Penal Code section 148.6, subdivision (a)(2), as added by Statutes 1995, chapter 590.

<sup>3</sup> Pursuant to Government Code section 17557, subdivision (c).

<sup>4</sup> Penal Code section 148.6, subdivision (a)(3), as added by Statutes 2000, chapter 289.

2. Update the multi-language advisory form folder as needed, if additional the new PC 148.6 advisory forms become available through the Department of Justice.
3. ~~Update the intranet site as the Department of Justice releases the new PC 148.6 advisory forms electronically for downloading purposes.~~
4. 3. Inform the local law enforcement agency employees about the availability of the new, (or any changes made to the existing) PC 148.6 advisory forms by the Department of Justice.
5. ~~Interview the complainant and determine in what language the advisory form should be made available to him/her for reading and signing as prescribed in the Penal Code section 148.6.~~
6. 4. Provide the complainant with the applicable advisory form written in the a language understood by the complainant that he/she can read. If the advisory form is unavailable in the complainant's language, request from the Department of Justice to send a new PC 148.6 advisory form written in a language that can be read by the complainant. <sup>5</sup> See Section V. A. for uniform time allowance for this activity.
7. ~~Address any questions or concerns that the complainant may have regarding reading and signing the PC 148.6 advisory form.~~

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### A. Uniform Allowances (Time)

The uniform time allowances cover the cost of the salaries and benefits of the employees performing the ongoing activities listed in Part B. 1, and Part D. 3, #5, #6, and #7 in the Section IV, of these parameters and guidelines. For purposes of the following calculations, productive hours mean: "Time spent performing any kind of mental or physical work. Paid leave is not included."

#### Citizens Filing Complaints of Police Misconduct Under P.C. Section 148.6

For activities IV. B. 1 and D. 3, 5; IV. B. 6; and IV. B. 7, multiply as follows:

(the total number of P.C. Section 148.6 cases) x (0.033 367-hours<sup>6</sup>) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities).

The Commission has not identified any circumstances that would cause an eligible claimant to incur additional costs to perform any other activities not incorporated in Section IV, of these parameters and guidelines. Eligible claimants incurring any such costs within the scope of the reimbursable activities may submit a request to amend the parameters and guidelines to the Commission for such costs to be approved for reimbursement, subject to the provisions of Government Code section 17557 and California Code of Regulations, title 2, section 1183.2.

<sup>5</sup> Penal Code section 148.6, subdivision (a)(2) and (a)(3).

<sup>6</sup> Equivalent to 22 minutes.

## B. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement:

### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. ~~Attach a copy of the contract to the claim.~~ If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim and itemize all costs for those services. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

### ~~5. Travel~~

~~Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B-1, Salaries and Benefits, for each applicable reimbursable activity.~~

### ~~6. Training~~

~~Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of~~

~~the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services.~~

### C. Indirect Cost Rates

Indirect costs are defined as costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage, which the total amount allowable indirect costs bear to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.



## VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>7</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate ~~received~~ from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

## VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (da), and California Code of Regulations, title 2, section 1183.2.

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<sup>7</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. **LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

# Commission on State Mandates

Original List Date: 7/6/2001  
Last Updated: 6/8/2004  
List Print Date: 02/10/2005  
Claim Number: 00-TC-26  
Issue: False Reports of Police Misconduct

Mailing Information: Draft Staff Analysis

## Mailing List

### Related Matter(s)

02-TC-09 False Reports of Police Misconduct (K-14)

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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LARRY WALKER  
Auditor/Controller-Recorder  
County Clerk  
  
ELIZABETH A. STARBUCK  
Assistant Auditor/Controller-Recorder  
Assistant County Clerk

March 10, 2005

Ms. Nancy Patton  
Assistant Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

RE: **Draft Staff Analysis and Proposed Parameters and Guidelines**  
*False Reports of Police Misconduct*, 00-TC-26  
County of San Bernardino, Claimant  
Penal Code Section 148.6, subdivisions (a)(2) and (a)(3)  
Statutes of 1995, Chapter 590  
Statutes of 2000, Chapter 289

Dear Ms. Patton:

We have reviewed the Commission on State Mandate's (CSM) draft staff analysis and proposed parameters and guidelines (Ps & Gs) for the above mandated program dated February 10, 2005. The County of San Bernardino (County) agrees to all of the changes proposed by the CSM staff except for the following activities for which we deem to be mandated and reimbursable, and should not be deleted as proposed by the CSM staff.

#### *IV. Reimbursable Activities*

##### **A) Training**

The County's proposal included the one-time activity of training employees that perform reimbursable activities.

##### CSM Staff Action:

The staff deleted training because it is not identified in the Statement of Decision as reimbursable activity, and the employees were trained to comply with the mandated program before the beginning of the reimbursement period. Thus, training is not reimbursable.

##### San Bernardino County's Rebutting Comments:

Even though the training activity was not stated in the Statement of Decision, the County finds that employee training is necessary in order to carry out the intended requirements of the mandate. In addition, it is highly unlikely that trained employees will remain perpetually in the department performing mandated activities through-out their career. Employee turnover and shifting of assignments in the department are two examples that would cause the County to hire

Claimant Rebuttal to CSM Staff Recommended Changes  
3/10/2005  
Page 2

and/or train employees in carrying out the mandate requirements. Employee training costs are direct result of this mandate, and thus, pursuant to Section 6 of Article XIII B of the California Constitution, these costs are reimbursable by the State.

**B) Complainant Interviews**

The County also included in its proposal that the following activities should be reimbursable as on-going activities:

- i) Interview the complainant, and determine in what language the advisory form should be made available to him/her for reading and signing as prescribed in the Penal Code section 148.6.
- ii) Address any questions or concerns that the complainant may have regarding reading and signing of the PC 148.6 advisory form.

**CSM Staff Action:**

Per CSM staff, the Statement of Decision states that this mandate only requires law enforcement agencies accepting an allegation of misconduct against a peace officer to have the complainant read and sign the advisory. This mandate does not require any explanatory, or other additional activities on the part of law enforcement agencies. Therefore, the staff deleted these activities.

**San Bernardino County's Rebutting Comments:**

Even though the above proposed activities were not stated in the Statement of Decision, the County finds that performance of these activities is necessary to achieve the intent of the mandate legislation. The Penal Code section 148.6 requires that advisory forms are to be available in multiple languages in order to serve the California's diverse groups of individuals belonging to different ethnic groups. Whenever any non-English speaking complainant files complaint against a peace officer, the law enforcement staff has to interview the complainant first in order to determine what language the PC148.6 advisory form should be made available to the complainant. Without interviewing, it will be almost impossible for the staff to carry out the mandated requirements if the staff on duty does not have sufficient understanding of the language spoken by the complainant. Thus, in order to provide the complainant with the advisory form written in a language understood by the complaint and upholding the complainant's right to file complaint against a peace officer, it is crucial to conduct interview. Even though the interviewing activity is not stated in the Statement of Decision, interviewing the complainant is necessary to comply with the mandate.

Further, Penal Code section 148.6 requires that any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign PC148.6 advisory form. In order to read and sign PC148.6 advisory forms, complainants must be able to read, comprehend, and sign the form without any exceptions. In San Bernardino County there are complainants who are illiterate, blind, or both. When requested to read and sign these mandated forms, these individuals have questions or require additional assistance from the County staff in understanding the mandatory requirements of the law. Even though these activities are not stated

**Claimant Rebuttal to CSM Staff Recommended Changes**

3/10/2005

Page 3

in the Statement of Decision, providing explanatory or other additional activities are necessary to comply with the mandate in helping these underprivileged complainants to understand and sign the mandated forms. Thus, under Section 6 of Article XIII B of the California Constitution, these activities are deemed to be mandated and reimbursable by the State.

**C) Claim Preparation and Submission**

The County initially proposed a combined uniform time allowance of 22 minutes per case for the following ongoing activities:

- i) Interview the complainant, and determine in what language the advisory form should be made available to him/her for reading and signing as prescribed in the Penal Code section 148.6.
- ii) Provide the complainant with the applicable advisory form written in the language that he/she can read.
- iii) Address any questions or concerns that the complainant may have regarding reading and signing of the PC 148.6 advisory form.

**CSM Staff Action:**

The CSM staff deleted two of the above proposed activities C) i) and C) iii) citing that the mandate does not require any explanatory or other additional activities on the part of law enforcement agencies. The staff modified this section to reduce the overall uniform time allowance to two minutes, reflecting the remaining activity of providing the complainant with the advisory form written in a language understood by the complainant.

**San Bernardino County's Rebutting Comments:**

According to Senior Commission Counsel at January 29, 2004 CSM public hearing meeting, a local agency has the discretion to include any activity in the Ps and Gs that the local agency believes is reasonably necessary to carry out the mandated requirements even though that particular activity is not expressly stated in the Statement of Decision (please refer to page 61 of the CSM 1/29/2004 public hearing proceedings transcript). The San Bernardino County deems that performance of proposed activities C) i) and C) iii) are reasonably necessary to accommodate the requirements, and achieve the actual intent of Penal Code section 148.6. The County is concerned that deletion of proposed activities C) i) and C) iii) will result in unreimbursed costs that are directly related to Penal Code section 148.6, which within the meaning of Section 6 of Article XIII B of the California Constitution are mandated and reimbursable by the State. Therefore, the San Bernardino County is requesting that the overall uniform time allowance for performing the above proposed activities to be restated back to the original 22 minutes per case.

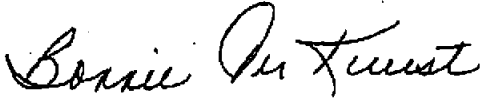
Claimant Rebuttal to CSM Staff Recommended Changes

3/10/2005

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If you have any questions, please feel free to call me at (909) 386-8850.

Sincerely,



Bonnie Ter Keurst  
Reimbursable Projects Section Manager



PUBLIC HEARING

COMMISSION ON STATE MANDATES

RECEIVED

FEB 20 2004

COMMISSION ON STATE MANDATES

--o0o--

CERTIFIED COPY

TIME: 9:30 a.m.

DATE: January 29, 2004

PLACE: State Capitol, Room 126  
Sacramento, California

--o0o--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: YVONNE K. FENNER, CSR License #10909, RPR

VINE, MCKINNON & HALL (916) 371-3376

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A P P E A R A N C E S

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COMMISSION MEMBERS

JAMES TILTON, Chairperson  
Representative of Donna Arduin, Director  
State Department of Finance

WALTER BARNES  
Representative of Steve Westly  
State Controller

JAN BOEL  
Acting Director, Office of Planning and Research

JOHN S. LAZAR  
City Council Member  
Turlock City Council

WILLIAM SHERWOOD  
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State Treasurer

COMMISSION STAFF

PAULA HIGASHI, Executive Director  
NANCY PATTON, Assistant Executive Director  
CAMILLE SHELTON, Senior Commission Counsel  
KATHERINE TOKARSKI, Commission Counsel

--oOo--

1 PUBLIC PRESENTATIONS

2 MATT AGUILERA

State of California, Department of Finance

3 ALLAN BURDICK, Director

4 California State Association of Counties

5 SUSAN S. GEANACOU, Senior Staff Attorney

6 State of California, Department of Finance

7 ARTHUR M. PALKOWITZ, Manager

Office of Resource Development

8 San Diego City Schools

9 KEITH B. PETERSEN, MPA, JD, President

SixTen and Associates

10 DAVID E. SCRIBNER, Executive Director

11 Schools Mandate Group

12 PAM STONE

CSAC SB 90 Committee

13 BONNIE TER KEURST

14 County of San Bernardino

15 --o0o--

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1 individual chooses to sign it or not.

2 MR. BARNES: So let me just say so your -- I  
3 guess the question is that in our listing of two specific  
4 activities, we say in accepting an allegation requiring  
5 the claimant to read and sign the advisory in Penal Code  
6 blah, blah, blah, it's just that they are requiring them  
7 to do so, but the fact that they don't does not impact  
8 the mandated costs associated with at least attempting to  
9 do that.

10 MS. TOKARSKI: That's what I'm getting at.

11 MR. BARNES: Okay. Again, that may be something,  
12 advice, you may want to give to the parameters and  
13 guideline people to say how you would deal with that  
14 situation. I think the concept here is that there is an  
15 activity put out. And I would like to try to make sure  
16 that the claimants aren't penalized by the fact that  
17 somebody decides they just don't want to sign it, don't  
18 understand it or whatever, and walks away.

19 MS. SHELTON: Can I just help on the distinction  
20 between the --

21 CHAIRPERSON TILTON: Sure.

22 MS. SHELTON: -- test claim and the parameters  
23 and guidelines? These activities here that are  
24 recommended for approval are those activities that are  
25 expressly required by statute. These are legal findings.

1 It's a question of law at this stage.

2 If the Commission does adopt this staff  
3 recommendation and it does go on to the parameters and  
4 guidelines -- and in the parameters and guidelines these  
5 two activities will be listed. But you also there have  
6 the discretion to include any other activity in the Ps  
7 and Gs that you find to be reasonably necessary to carry  
8 out these two activities. So you have wiggle room with  
9 respect to how they perform an activity and what is the  
10 most reasonable way of doing that. So you can add more  
11 activities in the parameters and guidelines than you have  
12 here in the proposed decision.

13 CHAIRPERSON TILTON: Would you agree that in  
14 those Ps and Gs, the analysis there, that you also would  
15 look at savings because of those requirements? Or do we  
16 need to --

17 MS. SHELTON: Yeah, I need to clear that up too.  
18 If you want to approve this test claim, then you are  
19 making a finding that there are increased costs mandated  
20 by the state. If you want to look into the question of  
21 whether there are real cost savings which result in no  
22 increased costs and, in fact, net savings, then you would  
23 need to continue this item, recommend to continue this --  
24 make a motion to continue the item and have us look into  
25 it. Because if this goes to parameters and guidelines,

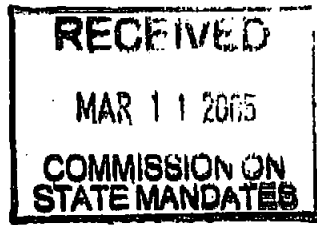
# AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



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**LARRY WALKER**  
Auditor/Controller-Recorder  
County Clerk  
**ELIZABETH A. STARBUCK**  
Assistant Auditor/Controller-Recorder  
Assistant County Clerk



## PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 West Hospitality Lane, Fourth Floor, San Bernardino, CA 92415-0018. I am 18 years of age or older.

On March 11, 2005, I faxed and mailed the letter dated March 10, 2005 to the Commission on State Mandates in response to draft staff analysis and proposed parameters and guidelines for False Reports of Police Misconduct, 00-TC-26; faxed and/or mailed it also to the other parties listed on this mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 11, 2005 at San Bernardino, California.

Jai Prasad  
Accountant II  
Reimbursable Projects Section

Post-It® Fax Note	7671	Date	3/11/05	# of pages	13
To	ETIENNA POOLE	From	JAI PRASAD		
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